



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

January 29, 2015

Ref: 8EPR-EP

Susan Bachini Nall
Chief, Colorado West Regulatory Branch
U.S. Army Corps of Engineers
400 Rood Avenue, Room 224
Grand Junction, CO 81501

Re: Climax Mine – McNulty Gulch, SPK-2013-00045

Dear Ms. Nall:

The EPA is responding to your request to review the U.S. Army Corps of Engineers (Corps) draft jurisdictional determination (JD) under the Clean Water Act (CWA) of waters in McNulty Gulch near Leadville, Colorado. You requested, in particular, that the EPA review the significant nexus analysis in the draft JD and the application of the waste treatment exclusion for the Climax Mine waste treatment system to these waters. While it is the Corps' responsibility to conduct this JD, the EPA has reviewed the information provided by the Corps and Climax Mine and supports the Corps' findings in this JD, as well as the Corps' analysis of the application of the waste treatment exclusion.

The narrative in the draft JD describes the significant nexus analysis. EPA supports the Corps' analysis of these waters and the Corps' conclusion that the waters identified in the McNulty Gulch JD are jurisdictional Waters of the U.S. In addition, the Corps identified which waters in McNulty Gulch carry contaminated waters and are therefore part of the current waste treatment system. The EPA supports the Corps' conclusion that the natural wetlands and stream resources in McNulty Gulch are not part of the treatment system. The EPA also reviewed the development documents associated with the EPA's Ore Mining and Dressing Effluent Limitation Guideline. The natural streams and wetlands resources are not specifically identified in these documents as part of the waste treatment system, indicating they are not considered a part of the treatment system and that the waste treatment exclusion does not apply to those waters.

In 2007, the EPA and the Corps addressed the jurisdiction of waters upstream of waste treatment systems in a joint memorandum¹. This memorandum states, "EPA and the Corps agree that the agencies' designation of a portion of waters of the U.S. as part of a waste treatment system does not itself alter CWA jurisdiction over any waters remaining upstream of such a treatment facility. This includes waters that are not actively conveying wastewater or seepage to the facility for treatment." Therefore, the EPA

¹ EPA/Corps Joint Memorandum dated October 25, 2007, Waters Upstream of WTS POA-1992-574, and POA-1992-574-Z

supports the Corps' conclusion that CWA jurisdiction over the McNulty Gulch waters of the U.S. includes waters upstream of the waste treatment facility.

Thank you for the opportunity to review the draft JD and for the coordination on the jurisdictional determination for this site. If you have questions or wish to discuss this, further please contact me at 303-312-6236 or hamilton.karen@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Hamilton", with a stylized flourish at the end.

Karen Hamilton, Chief
Aquatic Resource Protection & Accountability Unit
Ecosystems Protection Program